

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TODD ANDREW KLINE,

Defendant-Appellant.

UNPUBLISHED

July 1, 1997

No. 156821

Ottawa Circuit Court

LC No. 91-015915-FC

Before: Gage, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Defendant was convicted by a jury of armed robbery, MCL 750.529; MSA 28.797, and thereafter pleaded guilty of being an habitual offender, second offense, MCL 769.10; MSA 28.1082. He was sentenced to 2-1/2 to 15 years' imprisonment, and now appeals as of right. We affirm.

Defendant first contends that the trial court erred in denying his motion to suppress evidence that was taken from the trunk of his car which implicated him in the crime. A trial court's decision on a suppression motion will not be disturbed unless the ruling was clearly erroneous. A decision is clearly erroneous if, although there is evidence to support it, the court is left with a definite and firm conviction that a mistake has been made. *People v Chambers*, 195 Mich App 118, 121; 489 NW2d 168 (1992).

In this case, the trial court did not clearly err in denying the motion to suppress because the evidence established that defendant did not place any restrictions on the search of his car, unlike in *People v Douglas*, 50 Mich App 372, 379; 213 NW2d 291 (1973). Further, defendant admitted that he understood that his consent extended to the trunk of his car, and there is no indication that defendant conveyed an intention that his consent was limited and did not include the trunk.¹

We also reject defendant's claim that his detention was unlawful and that any evidence obtained as a result of it should have been suppressed. To justify an investigative stop, the police must have a particularized suspicion, based on objective observations, that the person stopped has been engaged, is engaged, or is about to engage in some type of criminal activity. *People v Coscarelli*, 196 Mich App 724, 727; 493 NW2d 525 (1992). Whether the police conduct at issue violates the Fourth

Amendment must be evaluated in light of the totality of the circumstances with which the police were confronted. *Id.*

In this case, defendant was found near the scene of the crime and fit some of the characteristics of the robber, as described by the victim. Further, footprints similar to those which the robber would have made were found leading to defendant's car. Under these circumstances, there was a reasonable articulable suspicion for police to stop defendant and investigate him. *Terry v Ohio*, 392 US 1; 88 S Ct 1868; 20 L Ed 2d 889 (1968).

Defendant also contends that he was deprived of a fair trial due to prosecutorial misconduct. Absent an objection during trial, appellate review of improper arguments by the prosecutor is precluded unless the prejudicial effect was so great that it could not have been cured by an appropriate instruction and failure to consider the issue would result in a miscarriage of justice. *People v Malone*, 193 Mich App 366, 371; 483 NW2d 470 (1992). We find that there was no misconduct in this case. The prosecutor, in final argument, properly related the facts to his theory of the case and in so doing stated that certain evidence lead him to believe that defendant was guilty. *People v Humphreys*, 24 Mich App 411, 414; 180 NW2d 328 (1970). The prosecutor also elicited proper rebuttal testimony. *People v Figgures*, 451 Mich 390, 399; 547 NW2d 673 (1996). The prosecutor did not improperly imply that defendant had a duty to explain his defense to police. *People v Wade*, 93 Mich App 735, 740; 287 NW2d 368 (1979). Finally, the prosecutor's questioning of a police officer, even if improper bolstering, was directly in response to defense questioning and does not merit reversal. *People v DeLisle*, 202 Mich App 658, 671; 509 NW2d 885(1993). Thus, we do not find a miscarriage of justice and decline to reverse on the basis of prosecutorial misconduct.

Affirmed.

/s/ Hilda R. Gage

/s/ Gary R. McDonald

/s/ E. Thomas Fitzgerald

¹ A review of the record below reveals that defendant never withdrew his consent to search, and no such issue was raised before the trial court or before this Court.